

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3685 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? No
2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

RAJENDRAPRASAD DURGAPRASAD LASHKARI

Versus

DY. SECRETARY AND ADDL.COLLECTOR & ANR.

Appearance:

Shri A.J. Patel, Advocate, for the Petitioner

Shri T.H. Sompura, Asst. Govt. Pleader, for the
Respondents

CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 09/04/96

ORAL JUDGEMENT

The order passed by the Deputy Secretary and Additional Collector of Revenue Department at Gandhinagar (respondent No. 1 herein) on behalf of the State Government on 23rd March 1989 under sec. 34 of the Urban Land (Ceiling and Regulation) Act, 1976 (the Act for

brief) is under challenge in this petition under articles 226 and 227 of the Constitution of India. By his impugned order, respondent No. 1 set aside the order passed by the Competent Authority (respondent No.2 herein) on 8th April 1983 under sec. 8(4) thereof declaring the holding of the petitioner not to be surplus for the purposes of the Act.

2. The facts giving rise to this petition move in a narrow compass. The petitioner filed his declaration in the prescribed form under sec. 6(1) of the Act. It came to be processed by respondent No. 2. After observing necessary formalities under sec. 8 thereof, by his order passed under sub-section (4) thereof on 8th April 1983, respondent No. 2 came to the conclusion that the holding of the petitioner was not in excess of the ceiling limit. Its copy is at Annexure A to this petition. It appears to have come to the notice of the concerned officer of the State Government. He appears to have found it not according to law. Its suo motu revision under sec. 34 of the Act was therefore contemplated. Thereupon a show-cause notice came to be issued on 13th November 1987 calling upon the petitioner to show cause why the order at Annexure A to this petition should not be revised. A copy of the aforesaid show-cause notice is at Annexure B to this petition. The petitioner appears to have filed his replies thereto on 14th December 1987 and 27th June 1988. Their copies are at Annexure C (collectively) to this petition. The matter appears to have been handled by respondent No. 1. After hearing the petitioner, by his order passed on 23rd March 1988 under sec. 34 of the Act, respondent No. 1 set aside the order at Annexure A to this petition. A copy of the aforesaid order passed by respondent No. 1 on 23rd March 1989 is at Annexure D to this petition. The aggrieved petitioner has thereupon approached this Court by means of this petition under articles 226 and 227 of the Constitution of India for questioning the correctness of the order at Annexure D to this petition.

3. It transpires from the material on record that the property bearing Final Plot No. 274 sub-plot No. 1 situated in Dariapur-Kazipur admeasuring 3095 square meters had a constructed house therein. Such constructed property together with the land appurtenant thereto will have to be excluded from the holding of the petitioner in view of the binding ruling of the Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal and others reported in AIR 1992 SC 1567.

4. It is also the case of the petitioner that the

land bearing Plot No. 4 in survey No. 741 admeasuring in all 4180 square meters (out of which the petitioner's share therein is 1393 square meters) houses some industries therein. According to the petitioner, such industries run in some constructed properties and they also deserve to be excluded from the holding in view of the aforesaid binding ruling of the Supreme Court. It appears that respondent No. 1 has not applied his mind to this aspect of the case.

5. Ordinarily, when an order is found suffering from the vice of non-application of mind on the part of its author, the matter has to be remanded to that authority for his fresh decision according to law. It however does not become clear from the order at Annexure A to this petition in what exact area the industries are housed in the property situated at Naroda. Besides, the petitioner has also disputed regarding the correct area of the property bearing Final Plot No. 274 sub-plot No. 1 situated at Shahibag (Dariapur-Kazipur). In that view of the matter, no useful purpose will be served by remanding the matter to respondent No. 1. The impugned order at Annexure A to this petition will also have to be quashed and set aside and the matter deserves to be remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law.

6. In the result, this petition is accepted. The order passed by the Deputy Secretary and Additional Collector of the Revenue Department at Gandhinagar on 23rd March 1988 at Annexure D to this petition is quashed and set aside. The order passed by the Competent Authority at Ahmedabad (respondent No. 2 herein) on 8th April 1983 at Annexure A to this petition cannot also be sustained in law. It is also quashed and set aside. The matter is remanded to respondent No. 2 for restoration of the proceeding to file and for his fresh decision according to law in the light of this judgment of mine. Since the matter is very old, respondent No. 2 shall dispose it of as expeditiously as possible preferably within two months from the date of receipt of the writ in this case. Rule is accordingly made absolute to the aforesaid extent with no order as to costs. Direct service is permitted.
